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In SUPPORT of
S.B. 411, “An Act Amending the Connecticut Business Corporation Act”

Judiciary Committee
March 10, 2014

Senator Coleman, Representative Fox and the other members of the Judiciary Committee:
Thank you for the opportunity to appear before the Judiciary Committee today.

My name is John H. Lawrence, Jr. I am a partner in the law firm of Shipman & Goodwin LLP in Hartford. The focus of my practice is on business and corporate law. I am testifying today as the Chair of the Business Law Section of the Connecticut Bar Association. The Business Law Section includes over 600 Connecticut attorneys who are interested in business and corporate law issues.

The Business Law Section supports Senate Bill 411, An Act Amending the Business Corporation Act (the “Bill”) which includes several recent changes to the Model Business Corporation Act (the “Model Act”) regarding irrevocable proxies, indemnification of officers, employees and agents, the duration of voting trusts and shareholder agreements, and the qualifications of directors. In response to Raised Bill No. 5489, which we believe will pass in this Session, the Bill also includes amendments to the Uniform Limited Partnership Act and the Limited Liability Company Act that would conform the reinstatement provisions after an administrative dissolution to the comparable provisions of the Connecticut Business Corporation Act (CBCA) and the Connecticut Revised Nonstock Corporation Act (CRNCA).

On behalf of the Business Law Section, we wish to thank the Committee for raising this important bill to keep Connecticut corporation law abreast of developments at the national level.

Specifically, among other things, the Bill would amend:

- Conn. Gen. Stat. Section 33-706 to clarify when the terms of an irrevocable proxy are binding on a transferee. The amendment provides that an irrevocable proxy does not terminate upon transfer of the underlying shares unless otherwise provided in the appointment of the proxy. The amendment will not change the rules relating to irrevocable proxies. It only attempts to eliminate an ambiguity in the existing statute.
- Conn. Gen. Stat. Section 33-776 to modify the indemnification provisions applicable to officers, employees and agents of a corporation to conform to the Model Act by establishing specific limits on indemnification of officers and deleting any statutory indemnification rights for employees and agents. Indemnification arrangements for employees and agents will be addressed by general common law principles of agency and by contract because they do not present conflicts raised by officer indemnification.
- Conn. Gen. Stat. Sections 715 and 717 to allow voting trusts and shareholder agreements to have a term of more than ten years. Existing voting trusts and shareholder agreements will be continue to be subject to the existing ten year limit with certain exceptions.
- Conn. Gen. Stat. Section 33-736 to clarify the rules governing qualifications for directors and nominees for directors.
- Conn. Gen. Stat. Sections 34-32c and 34-216 to make the Uniform Limited Partnership Act and the Limited Liability Company Act provisions governing reinstatement after an administrative dissolution retroactive to the date of dissolution, which is the rule applicable to a corporation that has been administratively dissolved under the CBCA or the CRNCA.

The Section would like to thank the Committee for accepting our recommendation to amend the Bill to conform the reinstatement provisions of the Uniform Limited Partnership Act and the Limited Liability Company Act to the reinstatement provisions applicable to a corporation that has been administratively dissolved.

These amendments were recommended by the Section in response to Raised Bill No. 5489, which, if enacted, would provide for administrative dissolution of corporations, limited partnerships and limited liability companies that are delinquent in their annual report filings with the Secretary of the State. Under the current law, if a limited partnership or limited liability company is dissolved and it is reinstated there is a question whether the reinstatement relates back to the date of the dissolution, unlike corporations where the statutory provisions are clearer on this issue. We believe that all of our entity statutes should be clear that reinstatement after an administrative dissolution relates back to the date of dissolution.

If Raised Bill No. 5489 were enacted, we believe it will be followed by a wave of administrative dissolutions and undoubtedly there will be numerous requests for reinstatement by entities that have inadvertently failed to make the required filings with the Secretary of the State. Having uniform provisions governing the relation back of a reinstatement among all corporations, limited partnerships and limited liability companies will clarify the reinstatement process and provide additional certainty to Connecticut entities.

Finally, we want to express our thanks to the Committee and the staff of the Legislative Commissioners' Office for following as closely as possible the language of the Model Act amendments. It is a real practical benefit to Connecticut lawyers for a Connecticut statute to follow the structure and language of a model act because we can look to decisions and scholarly articles in other states if there are no relevant Connecticut cases to help interpret the statute.

In addition, the Official Comments that accompany the Model Act are very helpful in interpreting provisions of the Connecticut statute. Those are benefits that are lost if the structure or language of our statute differs substantially from the Model Act. If the language of the Connecticut statute differs from the Model Act, then it immediately raises questions as to why different language was used and what was the intention of the General Assembly in changing the language. These issues are minimized if the Connecticut statute follows the structure and language of the Model Act.